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Docket No.: 210374US0

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

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RE: Application Serial No.: 09/903,785

Applicants: Laurence SEBILLOTTE-ARNAUD, et al.
Filing Date: July 13, 2001
For: CLEANSING COSMETIC COMPOSITION
Group Art Unit: 1751
Examiner: N. Ogden, Jr.

SIR:

Attached hereto for filing are the following papers:

Appeal Brief w/Appendix (In Triplicate).

Our credit card payment form in the amount of **\$330.00** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :

Laurence SEBILLOTTE-ARNAUD, et al. : EXAMINER: N. Ogden, Jr.

SERIAL NO: 09/903,785 :

FILED: July 13, 2001 : GROUP ART UNIT: 1751

FOR: CLEANSING COSMETIC COMPOSITION

APPEAL BRIEF

COMMISSIONER FOR PATENTS
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SIR:

Appellants submit this brief in response to the Final Rejection dated November 5, 2003.

REAL PARTY IN INTEREST

The real party in interest herein is L'Oréal S.A. of Paris, France.

RELATED APPEALS AND INTERFERENCES

Real party in interest L'Oréal S.A. filed a Notice of Appeal in connection with U.S. patent application serial no. 09/903,769 on March 22, 2004. This application may be related to the present application.

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STATUS OF CLAIMS

Claims 1-22 are pending.

STATUS OF AMENDMENTS

All amendments and remarks filed in this case have been entered and considered.

SUMMARY OF INVENTION

The invention relates to compositions containing, in a physiologically acceptable medium, (1) at least one foaming surfactant, (2) at least 1 % by weight of at least one hydrophilic silica, and (3) at least one oxyalkylenated compound. (Specification at page 3, lines 3-8 and 25, page 4, line 1 and the examples). In the invention compositions, the oxyalkylenated compound is selected from the group consisting of oxyethylenated compounds and oxyethylenated/oxypropylenated compounds. (Specification at page 9, lines 20-22). Also in the invention compositions, the oxyalkylenated compound is a thickening agent present in a composition thickening effective amount. (Specification at page 3, lines 3-8 and 25, page 4, line 1 and the examples). Furthermore, the invention compositions contain at least 35 % by weight of water. (Specification at page 4, lines 2-11).

The invention also relates to methods of using the invention compositions to cleanse skin and/or hair, to remove make-up, to treat greasy skin, and/or to disinfect skin. (Specification at page 22, line 19 through page 23, line 14).

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ISSUE

1. Whether The Pending Claims Are Obvious Over Glenn.

GROUPING OF CLAIMS

The claims do not stand or fall together. Each claim stands individually, and in the argument section provided below Appellants explain why the claims are each separately patentable, one from the other.

ARGUMENT

The invention compositions require the presence of (1) at least one foaming surfactant, (2) at least 1 % by weight of at least one hydrophilic silica, and (3) at least one oxyalkylenated compound, wherein the oxyalkylenated compound is a thickening agent present in a composition thickening effective amount. As demonstrated in comparative examples 1-3 set forth on pages 24 and 25 of the present specification, if one of these required ingredients is missing, the resulting composition is unacceptable. In stark contrast, invention example 1 set forth on pages 24 and 25 demonstrates that compositions containing all three of the required ingredients possess superior, more desirable properties. These examples demonstrate the criticality of having all three of the required ingredients present in the same composition.

For such compositions to be obvious under 35 U.S.C. §103, Glenn must motivate or suggest to one skilled in the art to combine all three required ingredients into a single composition. Glenn, however, does not provide the necessary suggestion or motivation. In

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particular, Glenn does not teach or suggest adding a thickening effective amount of at least one oxyalkylenated compound thickening agent to his compositions. Accordingly, Glenn does not teach or suggest the invention compositions or methods.

First, Glenn does not disclose or suggest adding a thickening effective amount of an oxyalkylenated compound to his compositions. For Glenn to disclose a thickening effective amount of the required oxyalkylenated compound, it would have to disclose or suggest actually thickening compositions with an oxyalkylenated compound. *See, Abbott Laboratories v. Baxter Pharmaceutical Products, Inc.*, 67 U.S.P.Q.2d 1191 (Fed. Cir. 2003) (“effective amounts” are not necessarily disclosed by prior art compositions containing the claimed active ingredient; the desired effect must be achieved). Merely because Glenn suggests that oxyalkylenated compounds can be added as humectants, solutes and surfactants does not mean that it discloses or suggests thickening compositions with such compounds. *See, Abbott Laboratories*. Based on Glenn’s disclosure related to the limited purposes for which oxyalkylenated compounds could be added to his compositions, no motivation would exist for one skilled in the art to actually thicken Glenn’s compositions using a thickening effective amount of an oxyalkylenated compound. Rather, one skilled in the art would add oxyalkylenated compounds in humectant, solute and/or surfactant effective amounts. Thus, Glenn neither teaches nor suggests the required element that the oxyalkylenated compound be present in a thickening effective amount.

Second, Glenn does not disclose or suggest adding oxyalkylenated thickening agents to his compositions. For oxyalkylenated compounds to be thickening agents, they must have a substantial degree of oxyalkylenation. (See, pages 9-15 of the present specification). Glenn

neither teaches nor suggests such compounds. Rather, as noted above, Glenn discloses oxyalkenylated compounds suitable for use in his compositions as humectants, solutes and surfactants. Given the purpose for which Glen includes such compounds in his compositions, these compounds are not going to have a substantial degree of oxyalkylenation, which means that they will not be thickening agents. This is particularly true in view of the fact that Glen's compositions are liquid.

The significance of the requirement that the required oxyalkylenated compounds be thickening agents is demonstrated by the examples in the present specification. Comparative example 2 (pages 24-25) does not contain PEG-120 methylgluclose dioleate, an oxyalkylenated thickening agent, but it does contain two of Glenn's acceptable solutes/humectants, sorbitol and glycerol. (See, Glenn at col. 13, lines 14-15). This composition is a "translucent liquid product like water." Thus, compositions containing only Glenn's solutes/humectants result in unacceptable products. However, when thickening agent PEG-120 methylgluclose dioleate is added, the resulting composition is a "thick translucent gel." (Example 1, pages 24-25). Thus, adding the claimed oxyalkylenated compound in a composition thickening effective amount results in a product having superior, more desirable properties, whereas adding Glenn's solutes/humectants does not. For this reason as well the §103 rejection is improper.

The Examiner cites Glenn's col. 4, line 30 through col. 5, line 67 to support his assertion that Glenn teaches thickened compositions. However, the cited passage relates to silica, not oxyalkylenated compounds. The Examiner has not cited, and indeed cannot cite, any portion of Glenn which teaches or suggest (1) oxyalkylenated compounds which are

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thickening agents and/or (2) adding a thickening effective amount of an oxyalkylenated compound to his compositions.

In view of the above, Appellants respectfully submit that the present claims are in condition for allowance, and that the pending rejection should be REVERSED.

Each dependent claim similarly points out and describes a patentable invention neither disclosed nor suggested by the applied prior art. These claims themselves are separately patentable.

Claim 2 is a composition claim which further requires the composition to have specific viscoelastic properties. Nowhere does Glenn describe or allude to compositions having such characteristics, or to any benefits resulting from a composition having such viscoelastic properties.

Claim 3 is a composition claim further requiring the presence of 35-95% water. Glenn neither teaches nor suggests compositions having a foaming surfactant, at least 1 % by weight of a hydrophilic silica, a thickening effective amount of an oxyalkylenated thickening agent and 35-95% water, nor does it recognize or suggest any benefits associated with such compounds.

Claim 4 is a composition claim further requiring the presence of 1-15% hydrophilic silica. Glenn neither teaches nor suggests compositions having a foaming surfactant, 1-15% by weight of a hydrophilic silica, and a thickening effective amount of an oxyalkylenated thickening agent, nor does it recognize or suggest any benefits associated with such compounds.

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Claims 5-8, each separately patentable, are composition claims further requiring the presence of specific hydrophilic silicas. Glenn neither teaches nor suggests compositions having a foaming surfactant, the hydrophilic silicas specified in these claims, and a thickening effective amount of an oxyalkylenated thickening agent, nor does it recognize or suggest any benefits associated with such compounds.

Claim 9 is a composition claim further requiring the presence of 1-20% oxyalkylenated thickening agent. Glenn neither teaches nor suggests compositions having a foaming surfactant, a hydrophilic silica, and 1-20% oxyalkylenated thickening agent, nor does it recognize or suggest any benefits associated with such compounds.

Claims 10-12 and 22, each separately patentable, are composition claims further requiring the presence of specific oxyalkylenated thickening compounds. Glenn neither teaches nor suggests compositions having a foaming surfactant, a hydrophilic silica, and the oxyalkylenated thickening agents specified in these claims, nor does it recognize or suggest any benefits associated with such compounds.

Claims 13 and 15, each separately patentable, are composition claims further requiring the presence of specific surfactants. Glenn neither teaches nor suggests compositions having the foaming surfactants specified in the claims, a hydrophilic silica, and a thickening effective amount of an oxyalkylenated thickening agent, nor does it recognize or suggest any benefits associated with such compounds.

Claim 14 is a composition claim further requiring the presence of 2-50% foaming surfactant. Glenn neither teaches nor suggests compositions having 2-50% foaming surfactant, a hydrophilic silica, and a thickening effective amount of an oxyalkylenated

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thickening agent, nor does it recognize or suggest any benefits associated with such compounds.

Claim 16 is a composition claim further requiring the presence of specific solvents. Glenn neither teaches nor suggests compositions having a foaming surfactant, at least 1 % by weight of a hydrophilic silica, a thickening effective amount of an oxyalkylenated thickening agent and the solvents specified in this claim, nor does it recognize or suggest any benefits associated with such compounds.

Claims 17-20, each separately patentable, are method claims further requiring use of the invention compositions to cleanse skin and/or hair, to remove make-up, to treat greasy skin, and/or to disinfect skin, respectively. Nowhere does Glenn describe or allude to using compositions having a foaming surfactant, at least 1 % by weight of a hydrophilic silica, a thickening effective amount of an oxyalkylenated thickening agent for such purposes, or to any benefits resulting from such use of such compositions.

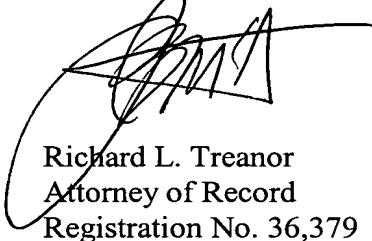
Claim 21 is a composition claim which further requires the composition to be a face mask. Nowhere does Glenn describe or allude to compositions having a foaming surfactant, at least 1 % by weight of a hydrophilic silica, a thickening effective amount of an oxyalkylenated thickening agent applied as a face mask, or to any benefits resulting from such a face mask.

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Accordingly, in view of the above remarks and reasons explaining the patentable distinctness of the presently appealed claims over the applied prior art, Appellants request that the Examiner's rejections all be REVERSED.

Respectfully submitted,

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APPENDIX

Claim 1: A cleansing composition, comprising:

(1) at least one foaming surfactant, (2) at least 1 % by weight of at least one hydrophilic silica, relative to the total weight of the composition, and (3) at least one oxyalkylenated compound which is selected from the group consisting of oxyethylenated compounds and oxyethylenated/oxypropylenated compounds in a physiologically acceptable aqueous medium comprising at least 35 % by weight of water, relative to the total weight of the composition, wherein said oxyalkylenated compound is a thickening agent present in a composition thickening effective amount.

Claim 2: The composition according to Claim 1, which has a complex modulus G^* ranging from 102 to 105 Pa and a loss angle ranging from 2°C to 45° C for frequencies ranging from 0.01 to 10 Hz.

Claim 3: The composition according to Claim 1, which comprises from 35 % to 95 % by weight of water relative to the total weight of the composition.

Claim 4: The composition according to Claim 1, wherein the amount of hydrophilic silica(s) ranges from 1% to 15% on an active material weight basis relative to the total weight of the composition.

Claim 5: The composition according to Claim 1, wherein the hydrophilic silica is selected from the group consisting of silicas of pyrogenic origin, of precipitated origin, and mixtures thereof.

Claim 6: The composition according to Claim 1, wherein the hydrophilic silica is selected from the group consisting of silicas having a specific surface ranging from 30 to 500 m^2/g , a number-average particle size ranging from 3 to 50 nm and a compacted density ranging from 40 to 200 g/l.

Claim 7: The composition according to Claim 1, wherein the hydrophilic silica is a

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pyrogenic silica.

Claim 8: The composition according to Claim 7, wherein the hydrophilic silica consists of a particle coated with hydrophilic silica.

Claim 9: The composition according to Claim 1, wherein the amount of oxyalkylenated compound(s) ranges from 1 % to 20 % on an active material weight basis relative to the total weight of the composition.

Claim 10: A composition according to Claim 1, wherein the oxyalkylenated compound is selected from the group consisting of polyethylene glycols, polyethylene glycol esters, polyethylene glycol ethers, alkoxylated alkyl derivatives of polyols, oxyalkylenated triesters of glycerol and of fatty acids, ethoxyethylenated urethane derivatives modified with alkyl chains, and mixtures thereof.

Claim 11: A composition according to Claim 9, wherein the oxyalkylenated compound(s) have the formula:



wherein $0 < m \leq 300$ and $0 \leq n \leq 300$ and $m + n \geq 6$, R and R' represent, independently of each other, hydrogen or a saturated or unsaturated, linear or branched, hydroxylated or non-hydroxylated alkyl chain containing from 1 to 30 carbon atoms, or an aryl chain, with the proviso that R and R' are not simultaneously hydrogen.

Claim 12: A composition according to Claim 9, wherein the oxyalkylenated compound(s) have the formula:



wherein $0 < m \leq 300$ and $0 \leq n \leq 300$ and $m + n \geq 6$, R and R' represent, independently of

each other, hydrogen or a saturated or unsaturated, linear or branched, hydroxylated or non-hydroxylated alkyl chain containing from 1 to 30 carbon atoms, or an aryl chain, with the proviso that R and R' are not simultaneously hydrogen.

Claim 13: The composition according to Claim 1, wherein the foaming surfactant is selected from the group consisting of nonionic surfactants, anionic surfactants, amphoteric surfactants and zwitterionic surfactants, and mixtures thereof.

Claim 14: The composition according to Claim 1, wherein the amount of foaming surfactant(s) ranges from 2 % to 50 % on an active material weight basis relative to the total weight of the composition.

Claim 15: The composition according to Claim 11, wherein the foaming surfactant is selected from the group consisting of alkyl polyglucosides, maltose esters, polyglycerolated fatty alcohols, glucamine derivatives, carboxylates, amino acid derivatives, alkyl sulfates, alkyl ether sulfates, sulfonates, isethionates, taurates, sulfosuccinates, alkyl sulfoacetates, phosphates and alkyl phosphates, polypeptides, anionic alkyl polyglucoside derivatives, fatty acid soaps, betaines, N-alkylamidobetaines and derivatives thereof, glycine derivatives, sultaines, alkyl polyaminocarboxylates and alkylamphoacetates, and mixtures thereof.

Claim 16: The composition according to Claim 1, which further comprises at least one solvent selected from the group consisting of alcohols comprising from 1 to 6 carbon atoms, polyols and mixtures thereof.

Claim 17: A method of treating the skin, the eyes, the scalp and/or the hair, comprising:

applying the composition of Claim 1 to the skin, the eyes, the scalp and/or the hair

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thereby cleansing and/or removing make-up from the skin, the eyes, the scalp and/or the hair.

Claim 18: A method of treating greasy skin, comprising:

applying the composition of Claim 1 to the skin, thereby removing grease from the skin.

Claim 19: A method of disinfecting the skin and/or the scalp, comprising:

applying the composition of Claim 1 to the skin and/or the scalp, thereby disinfecting the skin and/or the scalp.

Claim 20: A method of cleansing the skin, the eyes, the scalp and/or the hair, comprising:

applying the composition of Claim 1 to the skin, the eyes, the scalp and/or the hair in the presence of water thereby forming a lather; and

removing the lather containing soiling residues by rinsing the lather from the skin, the eyes, the scalp and/or the hair with water.

Claim 21: A cosmetic mask, comprising:

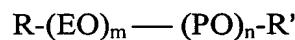
an applied composition of Claim 1 as a mask on the skin of the face.

Claim 22: A cleansing composition, comprising:

(1) at least one foaming surfactant, (2) at least 1 % by weight of at least one hydrophilic silica, relative to the total weight of the composition, and (3) at least one oxyalkylenated compound which is selected from the group consisting of oxyethylenated compounds and oxyethylenated/oxypropylenated compounds in a physiologically acceptable aqueous medium comprising at least 35 % by weight of water, relative to the total weight of the composition, wherein the oxyalkylenated

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compound is a thickening agent present in a composition thickening effective amount selected from the group consisting of polyethylene glycols, polyethylene glycol esters, alkoxylated alkyl derivatives of polyols, oxyalkylenated trimers of glycerol and of fatty acids, ethoxyethylenated urethane derivatives modified with alkyl chains, polyethylene glycol ethers or polyethylene glycol/polypropylene glycol ethers which are compounds of formula:



in which $0 \leq m \leq 300$ and $0 \leq n \leq 300$ and $m + n \geq 6$, R and R' represent, independently of each other, hydrogen or a saturated or unsaturated, liner or branched, hydroxylated or non-hydroxylated aryl chain, on condition that R and R' are not simultaneously hydrogen, and mixtures thereof.